

STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE
COMMENT/RESPONSE FORM

This comment and response form contains comments from the April 21, 2010 State Board meeting when the draft regulations were considered at Proposal Level.

Topic: Regulatory Equivalency & Waiver **Meeting Date:** June 21, 2010

Code Citation: N.J.A.C. 6A :5

Level: Second Discussion Level

Division: State Board Office

Completed by: State Board Office

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received from the State Board Members and the department's responses. Each commenter is identified at the end of the comment by a number which corresponds to the following list:

1. Kathleen Dietz
State Board of Education

- 1. COMMENT:** The commenter asked for clarification of the amendment to subsection 1.4(a)1, specifically whether the deleted language should remain with the proposed language.
(1)

RESPONSE: The department agrees and will amend subsection 1.4(a)1 to read:

Describe what the school district intends to accomplish that is currently prevented or disallow by an existing rule and how the school district's proposed equivalency meets the spirit and intent of the existing rule.



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BRET SCHUNDLER
Commissioner

TO: Members, State Board of Education

FROM: Bret Schundler
Acting Commissioner

SUBJECT: N.J.A.C. 6A:5, Regulatory Equivalency and Waiver

REASON
FOR ACTION: Sunset Readoption with Amendments

SUNSET DATE: July 8, 2010

PROJECTED
SUNSET DATE: July 2015

Summary

The Department of Education is proposing the readoption with amendments of N.J.A.C. 6A:5, Regulatory Equivalency and Waiver. These rules provide regulatory flexibility for local school districts and other institutions regulated by Titles 6 and 6A of the Administrative Code. This chapter is scheduled to expire on January 4, 2011, pursuant to N.J.S.A. 52:14B-5.1c.

In the early 1990s, public opinion reflected growing concerns about the number of government regulations in the everyday lives of citizens and the potential costs of those regulations. Likewise, the education community began expressing concerns about the complexity of administrative mandates, perceived micromanagement of school districts and regulations that focused on process rather than results. The need to address these issues prompted the Governor, the New Jersey State Board of Education, the Commissioner, local district boards of education and administrators to focus on ways to promote deregulation and regulatory flexibility for school districts.

As a part of the response to the call for regulatory flexibility, the State Board of Education adopted a new chapter of the Administrative Code in July 1995 headed *Regulatory Equivalency and Waiver* at N.J.A.C. 6:3A. These rules governed the equivalency and waiver process and provided the opportunity for regulatory flexibility to school districts and most programs regulated by the Department. An equivalency is permission to meet the requirements of a rule through an alternative means selected by the local district board of education. A waiver allows a local district board of education to avoid compliance with the specific procedures or substantive requirements of a rule for some reasons that are educationally, organizationally and fiscally sound.

In addition to serving as a mechanism for regulatory flexibility, the equivalency and waiver provision served to inform the Comprehensive Review of Code initiative. While considering new chapters of the Administrative Code, the Department evaluated the frequency and relevance of equivalency and waiver requests in those areas to determine the need for change. The special education chapter was among the first chapters revised as a result of the comprehensive review of code process and consequently adopted into Title 6A. Over 1,200 regulatory equivalency and waiver requests and decisions were utilized for guidance in revising the special education chapter. The requests highlighted areas in need of modification and new areas that needed to be addressed. The equivalencies provided options to school districts while the Administrative Code was being reviewed and served as an evaluation tool for the Commissioner and the State Board in revising and ultimately adopting the new Administrative Code.

Although the major areas of policy that were contained in Title 6 have been repealed and adopted as new rules in Title 6A, the Department continues to consider equivalency and waiver requests to the new chapters that may be needed to address an unforeseen hardship, unique circumstance or special situation for school districts on a case-by-case basis. In this capacity, an equivalency or waiver provides immediate relief while a long-term solution is researched and implemented.

The original intent of the equivalency and waiver process was not to grant waivers to certification requirements that were under the purview of the State Board of Examiners. The rules proposed for readoption with amendments continue this policy; an equivalency or waiver will only be granted to address a program need, not to address an individual's need for certification. The rules proposed for readoption with amendment continue to require that the school district's educational community be informed of the proposed equivalency or waiver and be provided the opportunity for comment. The educational community includes the district board of education, parents, administration and staff members.

Two amendments are proposed in N.J.A.C. 6A:5-1.4(a)1 and 1.5(a)1. The proposed amendment to N.J.A.C. 6A:5-1.4(a)1 seeks to allow school districts to achieve the broader purpose and intent of the relevant code through an equivalent means. The proposed amendment to N.J.A.C. 6A:5-1.5(a)1 requires school districts to identify the specific subject matter of the waiver.

The following summarizes the content of the chapter, noting the proposed amendments to the existing rules:

Subchapter 1. General Provisions

N.J.A.C. 6A:5-1.1 Purpose

This section describes the purpose of the chapter and the scope of the regulations. The rules apply to school districts and most programs operated by the Department. This section outlines the Commissioner's delegated authority to decide each equivalency and waiver request on a case-by-case basis.

An amendment is proposed to add Children and Families to the list of state Department operated programs that are required to comply with the rules of Titles 6 and 6A.

N.J.A.C. 6A: 5-1.2 Definitions

This section defines the terms "equivalency" and "waiver."

No amendments are proposed to this section.

N.J.A.C. 6A: 5-1.3 Criteria for an equivalency or waiver

This section describes the criteria that must be met for an equivalency or waiver request to be considered.

No amendments are proposed to this section.

N.J.A.C. 6A: 5-1.4 Equivalency process

This section lists the information that a school district must submit in the application to be considered for an equivalency.

An amendment is proposed to paragraph (a)1 to delete the requirement that the school district describe what it intends to accomplish that is currently prevented or disallowed by the existing rule and instead permit school districts to describe how the proposed equivalency meets the spirit and intent of the existing rule.

N.J.A.C. 6A: 5-1.5 Waiver process

This section lists the information that a district must submit in the application to be considered for a waiver.

An amendment is proposed to subsection (a)1 to delete the requirement that the district describe what it intends to accomplish that is currently prevented or disallowed by the existing rule and instead require school districts to describe the waiver sought.

N.J.A.C. 6A: 5-1.6 Review and duration of the equivalency or waiver

This section details the Commissioner's responsibility and authority to review and assess the equivalencies and waivers that are granted and to rescind an equivalency or waiver if appropriate. It also requires the Commissioner to report periodically to the State Board of Education.

This section also requires the Commissioner to annually evaluate the equivalencies and waivers to Titles 6 and 6A by proposing amendments to the Administrative Code to the State Board as appropriate. An equivalency or waiver may be granted for a maximum of three years.

No amendments are proposed to this section.

N.J.A.C. 6A: 5-1.7 Appeals

This section provides that a final determination of the Commissioner with respect to a grant or denial of an application for an equivalency or waiver can be appealed to the Superior Court of New Jersey, Appellate Division. Additionally, this section also provides that any challenge to a local district board of education's determination or action, involving an equivalency or waiver, is to be made by initiating a contested case before the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

No amendments are proposed to this section.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed readoption with amendments apply to all school districts and most programs operated by the Department. The primary goal is to provide more flexibility to school districts in meeting requirements and to increase autonomy in decision-making abilities at the local level. These rules will also affect parents, students, teachers, administrators and local taxpayers in a variety of ways.

School districts that have requested an equivalency or waiver be approved for an additional three years have reported that the original request was beneficial. The approved

requests resulted in the development of new services for underserved populations, an increased ability to redirect resources or add additional programs or the request resolved a long-standing problem. The school districts also report that students and parents benefit from improved programs and services. Local taxpayers have benefited as local school districts have reported cost savings that denote better, cost effective management of economic resources. These benefits mean more efficient schools that meet more of the community's needs. Also improving or adding new programs and creating fiscal economies increases support for local school district's efforts in the community on behalf of the schools.

The Equivalency and Waiver Process also proved valuable to the Department. The Commissioner recommended amendments to all chapters of rules in Title 6 that completed the Comprehensive Review of Code process based on the insight gained from school districts' equivalency and waiver requests. The Commissioner will continue to annually review all equivalency and waiver requests to Title 6A to determine when amendments are necessary.

Economic Impact

School districts choose to submit an application for an equivalency or waiver; therefore, the process does not present a financial burden. School districts that choose to apply for an equivalency or waiver will have the responsibility of determining whether the request is cost effective. Local taxpayers may benefit because more regulatory flexibility, creative programs and better uses of resources can create higher quality programs and services at a lower cost or without significant additional education expenditures.

Federal Standards Statement

The rules proposed for readoption with amendments will not be inconsistent with or exceed any Federal requirements or standards as there are no Federal requirements or standards relating to this chapter

Jobs Impact

The rules proposed for readoption with amendments are not likely to have an effect on the number of jobs in the school districts, private schools for the handicapped or the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments may impose compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A.

52:14B-16 et seq., only for private schools for the handicapped that might seek and/or obtain equivalencies and waivers from applicable Department regulations. Private schools for the handicapped would incur the administrative expense of application for an equivalency or waiver and for reporting and documentation of results once granted. It is not anticipated that professional services, however, would need to be employed to comply with these rules. As these requirements are necessary to permit a complete and fair evaluation of an application, and to monitor results of an equivalency or waiver granted, no lesser requirement can be provided for private schools for the handicapped.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments will have no impact on the average cost of housing in the State as the rules concern providing flexibility to school districts in meeting requirements and to increase autonomy in the decision-making abilities at the local level.

Smart Growth Development Impact

The rules proposed for readoption with amendments will not evoke change in housing production in Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan as the rules pertain to providing flexibility to school districts in meeting requirements and to increase autonomy in the decision-making abilities at the local level.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6A:5.

Full text of the proposed amendments follows (additions indicated by underlining **thus**; deletions indicated in brackets [thus]):

CHAPTER 5. REGULATORY EQUIVALENCY AND WAIVER

SUBCHAPTER 1. EQUIVALENCY AND WAIVER PROCESS

6A:5-1.1 Purpose

The purpose of this chapter is to provide regulatory flexibility for school districts to meet the requirements of the rules contained in the New Jersey Administrative Code Title 6 and Title 6A; this includes: educational services commissions, jointure commissions, regional day schools, Marie Katzenbach School for the Deaf, private schools for the handicapped, college operated programs and programs operated by the Departments of Children and Families, Human Services and Corrections as well as school districts; agencies and clinics are excluded. Regulatory flexibility may be granted as a waiver to a specific rule or as an equivalency to a specific rule so that school districts can provide effective and efficient educational programs. The Commissioner, with authority delegated by the New Jersey State Board of Education, may on a case-by-case basis, approve a waiver or an equivalency to a specific rule.

6A:5-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.

“ Commissioner” means Commissioner of the New Jersey Department of Education.

“Department” means the New Jersey Department of Education.

"Equivalency" means approval to achieve the intent of a specific rule through an alternate means that is different from, yet judged to be comparable to or as effective as, those prescribed within the rule.

"Waiver" means approval to avoid compliance either with the specific procedures or the substantive requirements of a specific rule for reasons that are judged educationally, organizationally and fiscally sound.

“State Board” means the New Jersey State Board of Education.

6A:5-1.3 Criteria for an equivalency or waiver

(a) An equivalency or waiver to a specific rule must meet the following criteria:

1. The spirit and intent of New Jersey Statutes Title 18A, applicable Federal laws and regulations, and the New Jersey Administrative Code Title 6 and 6A are served by granting the equivalency or waiver.

- i. Certification requirements of N.J.S.A. 18A:26-2 shall not be violated;

2. The provision of a thorough and efficient education to the students in the district is not compromised as a result of the equivalency or waiver; and
3. There will be no risk to student health, safety or civil rights by granting the equivalency or waiver.

6A:5-1.4 Equivalency process

- (a) The Commissioner, with authority delegated by the State Board for the purpose of this rule, may approve an equivalency to a specific rule based on an application submitted by a school district. The completed application must be signed by the chief school administrator and approved by the district board of education. The application developed by the Department and completed by the school district shall at a minimum:
 1. Describe [what] how the school district's [intends to accomplish that is currently prevented or disallowed by] proposed equivalency meets the spirit and intent of an existing rule;
 2. Describe the conditions or reasons for the proposed equivalency including the reference of the specific rule which necessitates the proposal;
 3. Describe the projected measurable results which will provide programs or services that are at least equal to the required current rule; and

4. Demonstrate that the school district's educational community, including the district board of education, parents, administration and staff, have been informed of the proposed equivalency to the specific rule and have been provided the opportunity for public comment.

6A:5-1.5 Waiver process

- (a) The Commissioner, with authority delegated by the State Board for the purpose of this rule, may approve a waiver to a specific rule based on an application submitted by a school district. The completed application must be signed by the chief school administrator and approved by the district board of education. The application developed by the Department and completed by the school district shall at a minimum:

1. Describe [what the school district intends to accomplish that is currently prevented or disallowed by an existing rule] the waiver sought by the district;
2. Describe the conditions or reasons for the proposed waiver including the reference of the specific rule which necessitates the proposal;
3. Describe the projected measurable results which will demonstrate that the waiver is educationally, organizationally and fiscally sound; and
4. Demonstrate that the school district's educational community, including the district

board of education, parents, administration and staff, have been informed of the proposed waiver to the specific rule and have been provided the opportunity for public comment.

6A:5-1.6 Review and duration of the equivalency or waiver

- (a) The school district shall submit reports and documentation of the measurable results for periodic review from time to time as required by the Commissioner.
- (b) The Commissioner shall present quarterly reports to the State Board of the equivalencies and waivers that have been granted.
- (c) The Commissioner shall evaluate the equivalencies and waivers that were granted to Title 6 and propose amendments to the Administrative Code to the State Board as appropriate.
- (d) The Commissioner shall annually evaluate the equivalencies and waivers granted to Title 6A to determine whether amendments to the Administrative Code should be proposed to the State Board.
- (e) The Commissioner may rescind the equivalency or waiver to the rule if the district is not complying with the intent of the specific rule. The Commissioner shall provide the district with a reasonable period of time to comply with all applicable rules after the equivalency or waiver approval is rescinded.

- (f) An equivalency or waiver shall not be granted for a period of more than three years.

6A:5-1.7 Appeals

- (a) Any party aggrieved by a determination of the Commissioner to grant or deny an equivalency or waiver pursuant to this chapter may appeal that determination in accordance with the provisions of N.J.A.C. 6A:4.
- (b) Any party seeking to challenge an action by a district board of education on the grounds that such action is in violation of the school laws shall initiate a contested case pursuant to N.J.A.C. 6A:3, notwithstanding that the action being challenged may involve the implementation of a waiver or equivalency granted by the Commissioner.